

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 06/15/09

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MR. BAR-B-Q, INC.,

Plaintiff,

09 Civ. 2194 (LBS)

-against-

NOTICE OF MOTION


FORTUNE PRODUCTS, INC.,

Defendant.

PLEASE TAKE NOTICE that upon the Declaration of Paul S. Beik, dated May 11, 2009, the exhibits thereto, and all pleadings and proceedings had herein, defendant will move this Court, before Hon. Leonard B. Sand, District Court Judge, at 500 Pearl Street, Daniel Patrick Moynihan United States Courthouse, Courtroom 15-A, New York, New York 10007, on June 18, 2009, at 2:15 p.m., or as soon thereafter as counsel may be heard, for an Order dismissing the Complaint pursuant to the First-Filed Rule on the grounds that there is now pending in the United States District Court for the Western District of Texas a prior-filed action between the parties involving the same subject matter as the action pending before this Court (*Fortune Products, Inc. v. Mr. Bar-B-Q, Inc.*) and granting to defendant such other and further relief the Court deems just and proper.

Dated: New York, New York
May 11, 2009

Isaac Test
without opposition
LB Sand
6/15/09


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